

201 KAR 36:050. Complaint management process.

RELATES TO: KRS 335.540, 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the procedures for filing, investigating, and addressing a complaint filed against a professional counselor.

Section 1. Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;
2. Organization; or
3. Entity;

(b) Shall be:

1. In writing; and
2. Signed by the person offering the complaint; and

(c) May be filed by the board based upon information in its possession.

(2)(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint.

(b) The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(3)(a) Upon receipt of the written response of the individual named in the complaint, a copy of his response shall be sent to the complainant.

(b) The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 2. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available, and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 3. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder and a complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

- (a) Dismiss the complaint or take action pursuant to KRS 335.540(3); and
- (b) Notify the complainant and respondent of the board's decision.
- (3) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the complaint screening committee shall prepare a formal complaint, which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.
- (4) If the board determines that a person may be in violation, it shall:
 - (a) Order the individual to cease and desist from further violations of KRS 335.505;
 - (b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 335.505 with a request that appropriate action be taken under KRS 335.599; or
 - (c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 335.505.

Section 4. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

- (2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.
- (3) The board may employ mediation as a method of resolving the matter informally.

Section 5. (1) If the complaint screening committee determines that a violation has occurred but is not serious, the complaint screening committee may recommend the issuance of a private written reprimand to the board. If the board accepts the recommendation, the board shall issue a private written reprimand to the credential holder.

- (2) A copy of the private written reprimand shall be placed in the permanent file of the credential holder.
- (3) A private written reprimand shall not:
 - (a) Be subject to disclosure to the public under KRS 61.878(1)(l); or
 - (b) Constitute disciplinary action.
- (4) A private written reprimand may be used by the board for statistical purposes or in any subsequent disciplinary action against the credential holder or applicant.

Section 6. If the board determines that there is reasonable cause to believe that a license holder or applicant for a license is physically or mentally incapable of practicing professional counseling with reasonable skill and safety to clients, the board may order the license holder or applicant to submit to an examination by a mental health professional or a physician designated by the board to determine the license holder's or applicant's mental health or physical status to practice professional counseling.

Section 7. Notice and Service Process. A notice required by KRS 335.500 to 335.599 or this administrative regulation shall be issued pursuant to KRS Chapter 13B and 201 KAR 36:090.

Section 8. Notification. The board shall make public:

- (1) Its final order in a disciplinary action under KRS 335.540 with the exception of a written admonishment issued pursuant to KRS 335.540(3); and
- (2) An action to restrain or enjoin a violation of KRS 335.505. (25 Ky.R. 485; Am. 832; eff. 9-

16-1998; 43 Ky.R. 781, 1400, eff. 3-31-2017; 44 Ky.R. 790, 122; eff. 1-5-2018.)